

WAC 463-39-005 ADOPTION BY REFERENCE.

(1) The energy facility site evaluation council adopts the following sections or subsections of chapter 173-400 WAC by reference.

Citation	Title	State Effective Date	Explanation
General Regulations for Air Pollution Sources (WAC 173-400-XXX)			
400-030	Definitions	9/20/93	
400-040	General Standards for Maximum Emissions	9/20/93	except (1)(c), and (1)(d), (2), (4), and the 2nd paragraph of (6)
400-050	Emission Standards for Combustion and Incineration Units	3/22/91	except the exception provision in (3)
400-060	Emission Standards for General Process Units	3/22/91	
400-081	Startup and Shutdown	9/20/93	
400-091	Voluntary Limits on Emissions	9/20/93	including all regulatory orders issued pursuant to this section
400-105	Records, Monitoring and Reporting	9/20/93	
400-107	Excess Emissions	9/20/93	
400-110	New Source Review (NSR)	9/20/93	
400-112	Requirements for New Sources in Nonattainment Areas	9/20/93	except (8)
400-113	Requirements for New Sources in Attainment or Unclassifiable Areas	9/20/93	except (5)
400-151	Retrofit Requirements for Visibility Protection	3/22/91	
400-161	Compliance Schedules	3/22/91	
400-171	Public Involvement	9/20/93	
400-190	Requirements for Nonattainment Areas	3/22/91	
400-200	Creditable Stack Height & Dispersion Techniques	3/22/91	
400-205	Adjustment for Atmospheric Conditions	3/22/91	

State adopted: 0/21/95; EPA effective: 7/22/96

WAC 463-39-010 PURPOSE.

The energy facility site evaluation council, under the authority vested in it by chapter 80.50 and 40 C.F.R. Part 52 is charged with responsibilities for the conduct of a state-wide program of air pollution prevention and control for energy facilities. This regulation provides the basic framework for carrying out the council's responsibilities for such a program through the establishment of standards for maximum permissible emissions, the implementation of registration and notice requirements, provision for monitoring and reporting, and the identification of regulatory actions which may be taken to enforce standards. This chapter is designed to operate within the statutory framework for the distribution of responsibilities between state, regional and local units of government in dealing with problems of air pollution.

State adopted: 5/3/92 EPA effective: 7/22/96

WAC 463-39-020 APPLICABILITY.

The provisions of this chapter shall apply state-wide for those sources under the jurisdiction of the energy facility site evaluation council. The provisions of this chapter shall not apply to those facilities incorporated by reference in chapters 173-400, 173-401, 173-406, and 173-460 WAC which are not under the jurisdiction of the energy facility site evaluation council.

State adopted: 9/21/95 EPA effective: 7/22/96

WAC 463-39-030 ADDITIONAL DEFINITIONS.

(1) "Council" means the energy facility site evaluation council.

(2) In addition to the definitions contained in WAC 173-400-030, 173-401-200, 173-406-101, "ecology" and "authority" shall be synonymous with the energy facility site evaluation council unless a different meaning is plainly required by context.

State adopted: 9/21/95 EPA effective: 7/22/96

WAC 463-39-095 PERMIT ISSUANCE.

Permit(s) issued for air emissions in accordance with chapters 173-400, 173-401, 173-406, and 173-460 WAC shall become an attachment(s) to a site certification agreement. For new energy facilities the permit(s) shall be effective upon the governor's approval and execution of the site certification agreement.

State adopted: 9/21/95 EPA effective: 7/22/96

WAC 463-39-100 REGISTRATION.

(1) The owner or operator of each stationary source subject to chapter 80.50 RCW shall register the source with the council.

Registration shall be on forms which have been adopted for use by the department of ecology within the time specified thereon.

A report of closure shall be filed with the council within ninety days after operations producing emissions permanently ceased at any source within the council's jurisdiction.

(2) The council shall ensure that the following, as it pertains to sources covered under this rule, is passed on to ecology in a timely manner for inclusion in its permit register:

- (a) Public meetings or hearings on draft operating permits;
- (b) Receipt of complete applications;
- (c) Permit appeals;
- (d) Issuance or denial of final permit, permit modifications, or renewals;
- (e) Authorization for a source to operate without an operating permit by limiting its potential to emit to levels below those that would require the source to obtain an operating permit;
- (f) Periodic summaries of enforcement order and changes made without revising the permit pursuant to WAC 173-401-722.

State adopted: 12/11/93; EPA effective: 7/22/96

WAC 463-39-120 MONITORING AND SPECIAL REPORT.

The department of ecology or its designee shall conduct a surveillance program to monitor the quality of the ambient atmospheres to concentrations and movements of air contaminants in accordance with the requirements of chapters 173-400, 173-401, 173-406, and 173-460 WAC.

As a part of this program, the director of the department of ecology or an authorized representative of the director may recommend that any source under the jurisdiction of the council conduct stack and/or ambient air monitoring, and to report the results to the council and department of ecology.

State adopted: 9/21/95; EPA effective: 7/22/96

WAC 463-39-135 CRIMINAL PENALTIES.

Persons in violation of this chapter may be subject to the provisions of chapter 80.50 RCW.

State adopted: 8/6/79; EPA effective: 7/22/96

WAC 463-39-170 CONFLICT OF INTEREST.

No member of the council shall have received, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit under the jurisdiction of this council.

- (1) For the purposes of this section, the term "member" includes any individual who has or shares authority to approve permit applications or portions thereof, either in the first instance or on appeal.
- (2) For the purpose of this section, the term "permit holders or applicants for a permit" shall not include any department or agency of a state government.
- (3) For the purposes of this section, the term "significant portion of his income" shall mean ten percent of gross personal income for a calendar year, except that it shall mean fifty percent of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving such portion pursuant to retirement pension or similar arrangement.
- (4) For the purposes of this section, the term "income" includes retirement benefits, consultant fees and stock dividends.
- (5) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" if it is derived from mutual fund payments or from other diversified investments over which the recipient does not know the identity of the primary source of income.

State adopted: 8/6/79; EPA effective: 7/22/96

WAC 463-39-230 REGULATORY ACTIONS.

The council may take any of the following regulatory actions to enforce this chapter to meet the provisions of RCW 80.50.040 or 70.94.422.

- (1) **Enforcement Actions—Notice of Violation.** At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431 (1) through (7), the council shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the

provision of this chapter or rule or regulation alleged to be violated and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the council may require that the alleged violator or violators appear before it for the purpose of providing the council information pertaining to the violation or the charges complained of. Every notice of violation shall offer the alleged violator an opportunity to meet with the council prior to the commencement of enforcement action.

(2) Civil Penalty.

(a) All penalties assessed as the result of air emission violations shall be consistent with RCW 70.94.332, 70.94.430, 70.94.431(1) through (7), and 70.94.435. Any person who violates any of the provisions of chapter 70.94 RCW may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be separate and distinct and, for a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty as set forth by RCW 70.94.431 for each day of continued noncompliance.

(b) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

The maximum penalty amount established in RCW 70.94.431 may be increased annually to account for inflation as determined by the state office of economic and revenue forecast council.

(c) Each act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 70.94.422.

(d) All penalties recovered under this section by the council shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015.

(e) In addition to other penalties provided by this chapter, persons knowingly under-reporting emission or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(3) Assurance of Discontinuance. The chair, or his/her authorized representative, may accept an

assurance of discontinuance of any act or practice deemed in violation of this chapter. Any such assurance shall specify a time limit during which discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the superior court.

(4) Restraining Orders, Injunctions. Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, the council, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(5) Emergency Episodes. The council may issue such orders as authorized by chapter 80.50 RCW, whenever an air pollution episode forecast is declared.

(6) Compliance Orders. The council may issue a compliance order in conjunction with a notice of violation. The order shall require the recipient of the notice of violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated.

State adopted: 8/26/94; EPA effective: 7/22/96